

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BOARD OF TRUSTEES OF THE)	
PATTERN MAKERS WELFARE FUND)	
OF CHICAGO AND VICINITY,)	
)	
Plaintiff,)	
)	
v.)	07 C 6831
)	
ARROW PATTERN & FOUNDRY CO.,)	Judge Moran
an Illinois Corporation, and)	
JOHN KUCHAY, Individually,)	Magistrate Judge Ashman
)	
Defendants.)	

FIRST AMENDED COMPLAINT

Plaintiff, Board of Trustees of the Pattern Makers Welfare Fund of Chicago and Vicinity, in their capacity as fiduciary of the Pattern Makers Welfare Fund of Chicago and Vicinity, by their attorneys, Hugh B. Arnold and Steven F. McDowell, pursuant to Rule 15(a), 20 and 21 of the Federal Rules of Civil Procedure, complain against the Defendants, Arrow Pattern & Foundry Co. and John Kuchay, Individually, as follows:

JURISDICTION AND VENUE

1. Jurisdiction over this action is based upon Section 301 of the Labor Management Relations Act (LMRA), as amended, 29 U.S.C. Section 185, upon Sections 502(c)(3) and 502(e)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. Sections 1132(c)(3) and 1132(e)(1), and upon this Court's supplemental jurisdiction under 28 U.S.C. Section 1367(a).

2. Venue is founded, pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. Section 1132(e)(2), in this District where the Pattern Makers Welfare Fund of Chicago and Vicinity (hereinafter "Welfare Fund") is administered, where Defendants reside and where any breach took place.

THE PLAINTIFF

3. The Plaintiff, Board of Trustees of the Pattern Makers Welfare Fund of Chicago and Vicinity is a fiduciary and the plan sponsor of the Pattern Makers Welfare Fund of Chicago and Vicinity, and, as fiduciary of the Welfare Fund under 29 U.S.C. § 1002(21)(A), has standing to bring suit under 29 U.S.C. § 1132(c)(3).

4. The Welfare Fund is maintained and administered in accordance with and pursuant to Section 302 of the National Labor Relations Act, as amended, 29 U.S.C. § 186, the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001, et. seq., and other applicable state and federal law. The Welfare Fund is administered by the Plaintiff, Board of Trustees, pursuant to the terms and provisions of the Trust Agreement which establishes the Welfare Fund.

THE DEFENDANTS

5. Defendant, Arrow Pattern & Foundry Co. (hereinafter Arrow), is an Illinois corporation, with its principal office located at 9725 S. Industrial Drive, Bridgeview, Illinois. Defendant, Arrow, is an employer engaged in an industry affecting commerce within the meaning of Sections 2(2), 2(6) and 2(7) of the LMRA, 29 U.S.C. §§ 152(2), 152(6) and 152(7), and Sections 3(5), 3(11) and 3(12) of ERISA, 29 U.S.C. §§ 1002(5), 1002(11) and 1002(12).

6. Defendant, John Kuchay (hereinafter Kuchay), is the President of Defendant, Arrow Pattern & Foundry Co.

COUNT I
ARROW PATTERN-AUDIT OF DELINQUENT CONTRIBUTIONS

7. Since at least April 1, 2001, and continuing through the present, Arrow has been bound to one or more collective bargaining agreements with the International Association of Machinists and Aerospace Workers, AFL-CIO which obligate Arrow to make contributions to the Welfare Fund.

7. From July 1, 2007 to the present, Defendant, Arrow, has made some but not all of the contributions due to the Welfare Fund. In addition, Arrow has withheld or accepted payment of amounts from employees toward Welfare Fund coverage and has not forwarded those amounts to the Welfare Fund.

8. Defendant, Arrow, has violated its collective bargaining agreement by failing to make all of the contributions due to the Welfare Fund under the terms of the collective bargaining agreement. Specifically, Arrow has failed to make contributions due for the month of August and September 2007 and has withheld or accepted payments of amounts from employees toward Welfare Fund coverage and has not forwarded those amounts to the Welfare Fund.

9. Under the Trust Agreement governing the Welfare Fund, to which Defendant is bound, the Board of Trustees is permitted to audit the records of participating employers to determine the extent of the participating employers' compliance with their contractual obligations to contribute to the Welfare Fund.

WHEREFORE, Plaintiffs pray for relief as follows:

A. That Defendant, Arrow Pattern & Foundry Co., be ordered to submit all necessary books and records to an accountant selected by Plaintiff for the purpose of conducting a fringe benefit compliance audit for the period from July 1, 2007 through the date of the audit and that judgment be entered for Plaintiff and against Defendant, Arrow Pattern & Foundry Co., in the full amount due by the audit conducted by Plaintiff's accountant.

B. Alternatively, that judgment be entered for Plaintiff and against Defendant in the full amount demonstrated by report forms submitted, with the right to perform an audit for the relevant period preserved for future proceedings.

C. That Plaintiff be awarded liquidated damages, pursuant to Section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2), and the trust agreement, in the amount of 10% of the contributions found due pursuant to the audit.

D. That Plaintiff be awarded its costs herein, including reasonable attorneys' fees incurred in the prosecution of this action and pre-judgment interest as provided for by the applicable agreements and Section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2).

E. That the Court grant Plaintiff such other and further relief as it may deem appropriate in the circumstances.

COUNT II

ARROW PATTERN-BREACH OF INSTALLMENT NOTE

1-9. Plaintiff restates and realleges the allegations of Paragraph 1 through 9 of this Complaint as Paragraphs I through 9 of Count II.

10. Count II arises from a common nucleus of operative fact with Count I and is pendent thereto. This Court has supplemental jurisdiction pursuant to 28 U.S.C. 1368(a).

11. Defendants, Arrow Pattern & Foundry Co. and John Kuchay, individually, entered into a Settlement Agreement and Mutual Release including an installment note with the Pattern Makers Welfare Fund of Chicago and Vicinity for contributions and liquidated damages to the Welfare Fund in the principal amount of \$51,925.22 in resolution of disputes which were the subject of this Court's action in Case No. 06 C 5577.

12. Defendant, Arrow Pattern & Foundry Co. made three payments pursuant to the terms of the settlement agreement and installment note, on or before October 1, 2007, November 1, 2007 and December 1, 2007, reducing the principal amount owed from \$51,925.22 to \$34,927.05, but failed to make any further payments, including a payment due January 1, 2008, thereby causing the entire remaining principal amount of the installment note to become immediately due and payable..

WHEREFORE, Plaintiffs, pray for judgment against the Defendant, Arrow Pattern & Foundry Co., as follows:

A. That the Court enter judgment in favor of Plaintiff, Pattern Makers Welfare Fund of Chicago and Vicinity and against Defendant, Arrow Pattern & Foundry Co., in the amount of \$34,927.05, the outstanding principal balance under the installment note.

B. That the Court grant the Funds all relief permitted under 29 U.S.C. 1132(g)(2) including liquidated damages, interest and attorneys fees.

C. That the Court, pursuant to the terms off the notes, grant the Plaintiff Fund the principal amount of the note plus interest and all reasonable costs of collection, including reasonable attorneys fees.

D. That the Court grant the Plaintiff Funds injunctive relief to prevent disbursement of assets or payment of other creditors prior to payment of any current delinquent contributions and note payments.

COUNT III

JOHN KUCHAY, INDIVIDUALLY-BREACH OF INSTALLMENT NOTE

1-12. Plaintiff restates and realleges paragraphs 1-12 of the Complaint as paragraphs 1-12 of this Count III.

13. Count III arises from a common nucleus of operative fact with Count I and is pendent thereto. This Court has supplemental jurisdiction pursuant to 28 U.S.C. 1368(a).

14. Defendant, John Kuchay is the President of Defendant Arrow Pattern and Foundry Co.

15. Defendant, John Kuchay, agreed to and signed the installment note described in paragraph 11 in both his capacity as President of Arrow Pattern & Foundry Co. and in his individual capacity as an additional maker of the installment note.

16. The installment note expressly provides that: "If this Note is signed by more than one person or entity, the obligations and authorizations hereunder shall be joint and several."

17. Defendant, John Kuchay, individually, is jointly and severally liable for the entire unpaid balance of the installment note of \$34,927.05, plus interest, attorneys fees and cost of collection as provided in the terms of the installment note.

WHEREFORE, Plaintiffs pray for judgment against John Kuchay, Individually as follows:

A. That the Court enter judgment in favor of the Pattern Makers Welfare Fund of Chicago and Vicinity and against Defendant, John Kuchay, individually, in the amount of \$34,0027.05, the unpaid balance of the installment note.

B. That the Court pursuant to the terms of the installment note grant the Pattern Makers Welfare Fund of Chicago and Vicinity interest and all reasonable costs of collection including reasonable attorneys fees.

C. That the Court grant such other relief as is appropriate under the circumstances.

BOARD OF TRUSTEES OF THE
PATTERN MAKERS WELFARE FUND
OF CHICAGO AND VICINITY,



By One of Their Attorneys

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